IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8698 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VADODARA MUNICIPAL CORPORATIONKARMACHARI KAMDAR UNION - Petitioner
Versus
MUNICIPAL CORPORTION OF BARODA & 4 - Respondent

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Appearance :
MR RD RAVAL for Petitioner.
MR PRANAV G DESAI for Respondent Nos. 1 - 2.
RULE SERVED for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/02/2006

ORAL JUDGMENT

1.The petitioner – union has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the action of the respondent of appointing the respondent Nos. 3, 4 & 5 as Complaint Receiver and further praying for the direction to the Respondents to appoint the members of the petitioner union, namely, (1) Mrunal Sharadchandra Saiwale, (2) Jeevanbhai N. Bhalia and (3) Arvind B. Soni to the post of Complaint Receiver with effect from 01.01.1988 or alternatively from 10.12.1990. The petitioner has also prayed for the direction to the respondent – Corporation to pay and thereafter continue to pay charge allowance for the post of Complaint Receiver to the aforesaid three members of the petitioner union w.e.f. 01.01.1988. By way of interim relief, the petitioner has prayed for the stay restraining

the respondent Nos. 1 & 2 from allowing the respondent Nos. 4 & 5 to resume their duty and giving charge of Complaint Receiver to respondent No. 3.

2.This Court has issued notice on 17.12.1990 and after recording the submission of the petitioner that the three members of the union have been continuously working since more than two years as Complaint Receivers in Gas department of the Corporation at Nandanvan Gas Station and even on 17.12.1990 when the interim order was passed, the Court granted interim relief stating that if that be so, then ad-interim relief is granted restraining the respondent Nos. 1 & 2 from removing these persons from working as Complaint Receiver upto 24.12.1990. The said interim relief was continued thereafter. The petition was admitted and rule was issued on 10.06.1991 and interim relief was ordered to be continued.

The respondents were granted liberty to move for fixing early date of hearing of the petition in the month of December, 1990. Till this date, no such application has been moved by the respondent – Corporation.

3.Mr. R.D. Raval, learned advocate appearing for the petitioner has submitted that the respondent – Corporation was intending to appoint outsiders to the promotional post and thereby side-tracking Reference (I.T.) No. 144/77. He has invited the Court's attention to the reference made to the Industrial Tribunal. The first point of reference was to the effect that whenever vacancy arose in any department of the Corporation, the same should be filled in by giving such temporary or permanent vacancy post to the employees of the same department on the basis of their seniority-cum-merit. While answering this reference, the Tribunal has observed in para 14

of its order that for all posts carrying pay scale upto Rs. 550-900, promotions should be given on the basis of seniority only. Mr. Raval has, therefore, submitted that since the three members of the petitioner union were falling in this category, they should be promoted to the post of Complaint Receiver and any preference given to the outsider is in violation of the said award.

4.He has further submitted that on the basis of the aforesaid award, the petition was filed before this Court being Special Civil Application No. 2955 of 1983 and while disposing of the said petition on 24.02.1984, this Court has observed that Clause 1 of para 14 of the award of the Tribunal applies to the post of Motor Mechanic because the pay scale of the post of Motor Mechanic is not higher than Rs. 550-900. The contention of the respondents that the said award of the Tribunal did not

cover the post of Motor Mechanic and that the Corporation was empowered to fill in the said post by selection was rejected. This Court has, therefore, allowed the said petition. Advertisement given by the Corporation for filling up the post of Motor Mechanic by selection being contrary to the award of the Tribunal was quashed and set aside. The Court further observed that since the petitioner No. 2 in that petition was getting salary in the pay scale not exceeding Rs. 550-900, he was governed by clause (i) of paragraph 14 of the award of the Industrial Tribunal and, therefore, the Corporation was directed to consider the petitioner No. 2 accordingly and if he is promoted, he should be granted all consequential benefits from the date when the Corporation decides to fill the post by advertisement.

5.He has further submitted that this order was

challenged by the respondent – Corporation before the Division Bench of this Court in Letters Patent Appeal, which was dismissed for default. He has, therefore, submitted that the petitioner's case is identical with the case of the petitioner in Special Civil Application No. 2955 of 1983 and accordingly, the petitioner should also be given benefit of the award passed by the Tribunal and clause 1 of para 14 of the award of the tribunal clearly applies to the three members of the petitioner union as they were in the pay scale of less than Rs. 550 – 900.

6. Though the petition was filed in 1990, no reply is filed on behalf of the respondent – Corporation. Even the respondent – Corporation has not moved this Court for vacation of the interim relief. The fact, therefore, remains that three members of the petitioner union have been discharging their duties as Complaint

Receiver. It is an admitted position that the award passed by the Industrial Tribunal has become final. The Court is, therefore, of the view that para 14 of the award clearly applies to the three members of the petitioner union and they are required to be promoted on the basis of seniority as directed by the Tribunal and their salaries are also to be fixed accordingly. However, looking to the financial position of the Corporation, no financial burden is cast upon the respondent – Corporation and hence, the Court does not pass any order with regard to payment of arrears. At the same time, notional pay fixation is required to be made in the case of all the three members of the petitioner union and accordingly, their pay is required to be fixed considering them as discharging the duty of Complaint Receiver from 17.12.1990, the date on which the present petition is filed before this Court. The respondents are, therefore,

directed to promote three members of the petitioner union as Complaint Receiver in terms of the above directions and notionally fix their salary accordingly.

7.No other relief is prayed for in this petition. The petition is accordingly disposed of. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

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